

IN THE COURT OF MS. POOJA JAIN,
ADDITIONAL DISTRICT JUDGE-03
EAST DISTRICT, KARKARDOOMA COURTS, DELHI

CS NO. 644/22

Mr. S. Visweswaran

.....Plaintiff

Versus

Smt. Saroj Singh &Ors.

.....Defendants

ORDER

1. An application filed by the defendant no.1 under Order 7 Rule 11 of CPC is pending adjudication today.

2. Brief facts as stated in the plaint are that defendants are the neighbours of the plaintiff who is a retired senior citizen and is residing at Flat no. SFS 43-B, Pocket-C, Mayur Vihar, Phase-III, Delhi-110096. It is averred that plaintiff became the victim of the malicious prosecution by the defendants in which the plaintiff was falsely made culprit of the offences under Sections 354C, 354D and 509 IPC. It is further averred that in response to the civil suit filed by plaintiff for mandatory injunction to remove the illegal construction and encroachments made by the defendants, defendants had lodged the FIR under Sections 354C, 354D and 509 IPC against the plaintiff in order to take revenge against plaintiff and his family in order to pressurize the plaintiff from withdrawing the proceedings qua the illegal construction raised by the defendants and her family members. Defendant no.3 is the owner of the flat no.SFS 42-B, First floor, Pocket-C, Green View Apartments, Mayur Vihar Phase-III, New Delhi-110096 against

which the plaintiff filed a civil suit which has already been settled in Lok Adalat and during the proceedings of settlement, defendants filed a complaint which was later lodged as the aforesaid FIR. It is further averred that defendant no.1 to 4 in connivance with defendant no.7 & 8 raised illegal construction in their respective flats in the year 2013 in the open courtyard, front courtyard and other areas outside the flat no.42-B and 42-A and encroached upon the common areas of the colony which was being used by all the residents of the colony. Since the plaintiff is living on the first floor which is adjacent to the flats of defendant no.1 to 4 and defendants no.7 & 8, aggrieved of lack of fresh air, sunlight, ventilation, safety and security of plaintiff and his family are heavily affected due to the illegal constructions. Despite filing various complaints to MCD and local police, and being aggrieved, plaintiff was constrained to file a civil suit bearing no. 312/2013 against the defendant no.3 being owner of the property which was later on settled in Lok Adalat on 24.08.2015 wherein defendant no.1 & 3 agreed to demolish the illegal and unauthorized construction and removal of encroachment. Defendant no.5 and 6 residing at SFS 43-A ground floor also made illegal constructions and since their flat is directly below the flat of the plaintiff, plaintiff was constrained to file a separate civil suit against them bearing no.313/2013 pending adjudication.

3. Defendant no.5 and 6 filed a civil suit no.941/17 against the plaintiff as a counterblast to his civil suit no.313/2013 and the trial is still going on and wherein plaintiff has moved an application under Order 7 Rule 11 r/w 151 CPC for dismissal of the suit.

4. It is further averred that defendants have acted in connivance

with each other and have given false statements u/s 164 Cr.PC in order to file the charge-sheet against plaintiff. It is further averred in the plaint that the defendants had acted in connivance with each other and have given false statement, deposed falsely under oath and stated falsely on affidavit to the Court, police officials u/s 164 & 161 Cr.PC. which were part of the chargesheet filed by the police officials on the basis of false deposition. It is further averred that the plaintiff suffered the investigation, trial for more than six years and the Ld. Trial Court was pleased to discharge the plaintiff without framing any charges. Thereafter, two separate criminal revision petition nos.88/2020 and 89/2020 were also filed in the sessions Court by the defendant no.1 and by the state separately in which the Ld. ASJ was pleased to dismiss both the petition vide order dt. 15.12.2021 upholding the discharge order of the Ld. Trial Court. It is further averred that the plaintiff has suffered heavy monetary loss, humiliation, mental agony, peacefulness, loss of sleep, tension hence, prayed for damages amounting to Rs.49,60,000/- with interest.

5. The defendant no.1 has filed the present application under Order 7 Rule 11 rw Sec. 151 CPC on the ground that the plaintiff has no cause of action against the defendant since the plaintiff's suit for malicious prosecution is pre-mature in view of pendency of Crl. M. C. no.403/2023 before the Hon'ble High Court of Delhi wherein the notice has been issued to the plaintiff vide order dt. 20.01.2023.

6. I have heard Ld. Counsel for both sides on the application and have perused the record in light of relevant statutory provisions of the Court. It is settled law that while dealing with an application for rejection of plaint

u/o 7 Rule 11 CPC, the Court has to consider only the averments made in the plaint and not the defence of the defendant or contents of the application u/o 7 Rule 11 CPC.

7. The law with regard to Order VII Rule 11 of the CPC has been propounded by Hon'ble Supreme Court in Dahiben vs. Arvind bhai Kalyanji Bhanusali & Ors. 2020 SCC OnLine SC 562. Reference in this regard may be made to relevant paragraphs of the judgment, which are set out below:

".....23.9 In exercise of power under this provision, the court would determine if the assertions made in the plaint are contrary to statutory law, or judicial dicta, for deciding whether a case for rejecting the plaint at the threshold is made out.

23.10. At this stage, the pleas taken by the defendant in the written statement and application for rejection of the plaint on the merits, would be irrelevant, and cannot be adverted to, or taken into consideration. [Sopan Sukhdeo Sable v. Charity Commr., (2004) 3 SCC 137]

23.11. The test for exercising the power under Order 7 Rule 11 is that if the averments made in the plaint are taken in entirety, in conjunction with the documents relied upon, would the same result in a decree being passed. This test was laid down in Liverpool & London S.P. & I Assn. Ltd. v. M.V. Sea Success I [Liverpool & London S.P. & I Assn. Ltd. v. M.V. Sea Success I, (2004) 9 SCC 512].

8. Now coming to the present case, the plaintiff's case is based upon the fact that he has been discharged in a criminal case filed on the false complaint by the defendant against him. Moreover, the said order has been challenged vide two separate criminal revision petitions filed by the defendant no.1 and State separately which were dismissed by the Ld. ASJ vide order dt. 15.12.2021 and uphold the discharge order of Ld. Trial Court, therefore, the said discharge order attained finality and gives a cause of action to the plaintiff against the defendants.

9. It is orally argued by Ld. Counsel for defendants that plaintiff

could have filed suit for malicious prosecution in case of acquittal in the criminal case, but the plaintiff has no cause of action against the defendant if he has been discharged, but not acquitted.

10. Per contra, Ld. Counsel for plaintiff referred the Article 74 of the Limitation Act, which provides that :

<u>Description of suits</u>	<u>Period of Limitation</u>	<u>Time for which period begins to run</u>
74. For compensation for a malicious prosecution	One year	When the plaintiff is acquitted or the prosecution is otherwise terminated.

11. In my considered opinion the arguments made by Ld. Counsel for plaintiff hold weight and order of discharge in a criminal case also gives cause of action to the plaintiff for filing suit for malicious prosecution.

12. Ld. Counsel for defendant next argued that order for discharge was passed on 14.02.2020 and the plaintiff should have instituted case within one year from the date of discharge order. Per contra Ld. Counsel for plaintiff argued that there were, two revision petitions filed by State and defendant no.1 separately, which were dismissed by Ld. ASJ on 15.12.2021 and only then the order for discharge attained finality.

13. In my considered opinion the date of dismissal of revision petitions is relevant for the purpose of calculation of limitation period. The present case was filed by the plaintiff on 05.12.2022 within one year from the date of dismissal of criminal revision petitions i.e. 15.12.2021. Hence,

the suit of plaintiff is not barred by law of limitation. It is further pertinent to note that the plaintiff's suit can not be stated to be premature since the defendant's petition Crl. M.C. No.403/2023 is *prima-faice* appeared to be filed after institution of the present suit.

14. In view of above observation and applying the principles of law, the present application filed on behalf of defendant no.1 deserves dismissal. Accordingly, the present application under Order 7 Rule 11 CPC is disposed off as dismissed.

Announced in open court
Dated: 16.05.2024

(POOJA JAIN)
Additional District Judge-03
East/Delhi/16.05.2024